

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7054 OF 1999

Gajanan Babu Patil,
Resident of Dadale,
Post Bawda, Taluka Dahanu,
District : Thane.

...

Petitioner

Versus

1. The State of Maharashtra,
through the Secretary,
Finance Department, Mantralaya,
Mumbai 400 032.

2. The Director of Accounts
& Treasurers (M.S.),
Government Barrack Nos. 15 and 16,
Free Press Journal Marg,
Mumbai 400 021.

3. The Pay & Accounts Officer,
Government of Maharashtra,
Plot No. 176/179, Backbay
Reclamation Scheme, Foreshore
Road, Mumbai 400 021.

... Respondents

Mr. Vijay Patil for Petitioner.

Mr. S.R. Atre with Mr. A.H. Palekar, A.G.P. for
Respondent Nos. 1 to 3.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 24, 2005

ORAL JUDGMENT (Per F.I. Rebello,J.):

. The Petitioner joined services of Respondent No.
1 in the Accounts Department as Lower Division
Clerk. In the year 1977, F.I.R. came to be lodged
against the Petitioner and three others for the
offences punishable under Section 420, 380, 411 and
120(b) of I.P.C. The investigation was conducted

by A.G.P. and Criminal Case was filed in the court of Metropolitan Magistrate, 20th Court, Esplanade, Bombay. The Petitioner was suspended by order of 6.1.1977. The Petitioner along with another amongst the five accused, were discharged. In fact the discharge order of 24.7.1988 would show that the learned Metropolitan Magistrate held that there was no evidence and that the Petitioner and another had no connection with the transaction and A.P.P. had conceded the position. The Respondents did not prefer any appeal or revision against the order of discharge.

2. By an order of 24.7.1978 the order of suspension was reviewed and the petitioner was reinstated. On 9.7.1981 Petitioner received chargesheet. The charges as set out against the petitioner were as under :

Article I : That the above said Shri. G.B. Patil misused his official position to help some outside persons in a criminal conspiracy to cheat the Government of Maharashtra by presenting forged bills to the Pay & Accounts Office, Bombay, by getting the forged bills passed for payment by committing

theft of cheques along with the bills, by dishonestly receiving and retaining a part of the stolen property out of the total amount of Rs.70,085/- and thus becoming a party to the conspiracy.

Article II : That Shri. G.B. Patil was found in possession of unaccounted cash to the extent of Rs.11,500/- as reported by the Anti Corruption Bureau as a result of their investigation.

Article III : That Shri. G.B. Patil misused the Government Quarters allotted to him by the Government of Maharashtra, by accommodating unauthorised tenant in the said Quarters."

. The Petitioner along with chargesheet was given list of documents on which the department intended to rely upon in the enquiry. It is the case of the Petitioner that they denied the charges and sought documents and after which he would file his reply. The enquiry thereafter came to be held and the enquiry officer submitted his report dated

21.2.1985. In so far as first two charges are concerned, the enquiry officer held the petitioner guilty and considering the gravity of the misconducts proposed that he should be dismissed from service with immediate effect. In so far as third charge of subletting, based on the admission by the Petitioner, the Enquiry Officer held the Petitioner to be guilty. However, proposed punishment of holding up of one increment for the period of three years without effect on the future increments. The Disciplinary authority issued show cause notice dated 21st February, 1985 to the Petitioner enclosing a copy of the enquiry report and further setting out that he had provisionally come to the conclusion that the penalty of dismissal be imposed on the Petitioner. The Petitioner was called upon to give his representation on the penalty proposed based on the evidence adduced in the enquiry. Pursuant to said show cause notice and memorandum the Respondent filed his reply dated 27.3.1985. Various contentions were raised as to why the findings of the enquiry officer should not be accepted and that he be exonerated. With specific reference to Charges contained in Article II in Paragraph 10, this is what the Petitioner set out :

"With reference to charges contained in Article 2, I have to explain all the possession of Rs.11,500/- by me. I further submit that there is nothing on record even to indicate in the first place I had received any amount from the stolen amount referred to in Article 1 and in the second place Rs.11,500/- formed the part of stolen amount referred to in Article 1. In fact article 2 has also no basis in as much as there was no data and material before the authorities to frame the charges."

. Based on the enquiry the Disciplinary Authority by his order dated 21.4.1986 was pleased to dismiss the Petitioner from government service with effect from 21.4.1986. The Petitioner preferred an appeal which came to be dismissed by the appellate authority by order dated 3.5.1993.

3. Aggrieved Petitioner preferred Original Application No. 525 of 1993 before the Maharashtra Administrative Tribunal. Before the learned Tribunal, it was urged that the order of dismissal is laconic as it does not mention anything except the expression as dismissed. It was submitted that

the enquiry Officer and Disciplinary Authority were one and the same. It was further submitted that the copies of documents were not supplied. It was then submitted that the order of discharge amounts to acquittal and as such the departmental enquiry could not have been initiated more particularly when the learned Magistrate had found no evidence against the Petitioner. It was submitted that the confessional statements dated 17.1.1977 and 6.1.1977 and panchanama dated 6.1.1977, could not have been relied upon. At any rate as the Petitioner had been discharged, it amounted to clean acquittal and no inquiry based on the same chargesheet ought to have been held against the Petitioner.

. Dealing with the contention advanced, the learned tribunal was pleased to observe that the confessional statement in Criminal trial would not be admissible, but only the statement that leads to recovery would be admissible. However, as the enquiry was departmental enquiry, it would be open in the domestic enquiry to consider this material, as strict rules of evidence are not applicable. The tribunal then noted that the petitioner had not denied that he had made statement or that the

panchanama was drawn although according to him the same was taken under pressure. The enquiry Officer had sought information from the Petitioner and was satisfied that they were true and voluntary. There was evidence in the form of two admissions and panchanama and noted that in so far as confessional statement is concerned, the disciplinary authority had come to the conclusion that the statement was voluntary and therefore was entitled to rely upon the said statement. The tribunal then noted the record placed before it and arrived at the conclusion that the findings arrived at by the enquiry officer are not perverse and as such it is not for the tribunal to interfere with the same. In so far as third charge is concerned, again the learned tribunal concurred with the findings of the enquiry officer. The tribunal noted that considering the nature of the misconduct, punishment of dismissal cannot be said to be irrational or disproportionate. For all the aforesaid reasons, the tribunal was pleased to dismiss the original Application.

4. It is this order, which is the subject matter of the present petition. It is firstly submitted that the enquiry was not held in terms of the Maharashtra Civil Services (Discipline and Appeal)

Rules, 1979 and more specifically sub Rule 16 of Rule 8 which provides for the procedure to be followed for imposing major penalties. On that count alone, it is submitted that the enquiry should be set aside.

. It is next submitted that the enquiry officer relied upon the evidence which was not proved. In the enquiry, the petitioner had specifically replied to the questions asked by the Enquiry Officer that the statements were not voluntarily made and were taken under pressure and out of fear and after being manhandled by the police. Even assuming that confessional statements could have been considered in departmental enquiry, the enquiry Officer had to come to the conclusion that the statements were voluntarily made. The enquiry Officer has not recorded any such findings. Once that be the case, the voluntary statement has to be rejected. For that purpose reliance is placed on the judgement of the Apex Court in the case of *Kuldipsingh Versus State Bank of Punjab and Ors.* 1996 (10) S.C.C. 659. In so far as panchanama of recovery is concerned, it is pointed out that a strange procedure was followed by the Enquiry Officer. The panch was not examined. Only questions were put to the panch by the Enquiry

Officer and thereafter to the petitioner. In other words petitioner had no opportunity to cross examine the pancha on his evidence and on that count alone the enquiry is liable to be set aside.

. It is then contended that once the Petitioner was discharged in respect of the same charges, no disciplinary enquiry could have been conducted. It is pointed out that the Magistrate did not even think it fit to frame charges, and consequently the punishment imposed must be set aside as there could not have been a departmental enquiry, after discharge of the Petitioner.

. It is next pointed out that money was not recovered from the petitioner. At any rate it was for the respondent to prove that the money found was disproportionate to the known source of income of the petitioner. No such evidence has been led and consequently the charges against the petitioner had not been proved.

. Lastly it is contended that there was no evidence to show that the Petitioner had allowed some other person to reside in the premises and if that be so, there was no question of the Petitioner being held guilty of the charges as levelled and

consequently also the findings on the said charge
ought to be set aside.

. On the other hand on behalf of the Respondent State, it is pointed out that it may be true that the enquiry officer did not strictly follow the procedure as laid down in the rules. It is however, submitted that no prejudice was occasioned to the petitioner and once that be the case, it is not open to the petitioner to contend that the enquiry has to be interfered with and that punishment ought to be set aside. Reliance is placed in the judgment in the case of State Bank of Patiala and Ors. Vs. S.K. Sharma, 1996 S.C.C. (L & S) 717. Reliance is also placed in the judgement of the Apex Court in the case of Kuldipsingh Vs. Commissioner of Police and others, (1999) 2 Supreme Court Cases 10 to contend that once the Disciplinary authority had based on the enquiry, recorded findings of fact, it will not be open to this court to interfere with the said findings of fact unless it was shown that the findings are perverse, meaning thereby not supported by any evidence on record or are not based on the evidence adduced by the parties or which no reasonable person could have arrived at such findings on the basis of that evidence.

Reliance is also placed in the Judgment in the case of K.L. Tripathi Vs. State Bank of India and Ors. AIR 1984 S.C. 273 to contend that it is not a requirement of the principles of natural justice, that the right to cross examination is an integral part of the principles of natural justice. It is therefore, submitted that the impugned order should not be set aside.

5. Before dealing with the contentions it may be pointed out that it is not the case of the Petitioner that the charges as framed against him are not misconduct within the meaning of Misconduct as set out. Even had it been so, considering the charges which included the charge that the petitioner was found in possession of unaccounted cash, the provisions of the Prevention of Corruption Act, 1947 would be applicable and as such it is not required that the misconduct must be specifically included as a misconduct. In other words if during the tenure of service of a Government employee, he is charged for any offence in respect of his duties as a Government employee, even if that offence is not included in the various misconducts, specifically enumerated, it still is a misconduct, even if it has not been specifically included under the definition of misconduct as by

the very nature of the offence it is a misconduct which need not be included specifically amongst the enumerated misconducts. This proposition finds support in the judgement of the Apex Court in the case of B.C. Chaturvedi Vs. Union of India 1995(6) S.C.C. 749. In that case the issue before the Apex Court was whether the charge of having been in possession of assets, disproportionate to known source of income is misconduct. The Apex Court considering the definition of misconduct under the Prevention of Corruption Act, 1947 was pleased to hold that, by that very fact, it amounts to a misconduct. The need to make such misconduct, expressly a part of enumerated items of misconduct under Central Civil Services, C.C.A. Rules is obviated. For that purpose what has to be established is that the charged officer must be a public servant and he must be found to be in possession or through any person or through his behalf at any time in office, pecuniary resources or property disproportionate to his known source of income. If he cannot satisfactorily account for the same, he is said to have committed misconduct. In that context, the apex Court departed from the otherwise well known principle as set out in its earlier judgements that misconduct must be defined in the standing orders or in the relevant service

regulations; A.L. Kalra Vs. Project & Equipment
 Corpn. of India Ltd. (1984) 3 S.C.C. 316 where
 the general proposition was reiterated was
 distinguished. It will therefore, be clear that
 Charge 2 would constitute misconduct, if proved.

6. With that, we may now deal with the contentions
 raised on behalf of the Petitioner that the entire
 enquiry was vitiated and as such the punishment
 imposed based on an enquiry which is vitiated, must
 be set aside. Rule 8(1) sets out that any order
 imposing any of the major penalties must be after
 an enquiry held as far as in the manner provided in
 the rules and Rule 9 of the Public Servants Act,
 1850. Sub Rule 16 need be specifically adverted
 to, and it reads as under :

"On the date fixed for the inquiry, the
 oral and documentary evidence by which
 the articles of charges are proposed to
 be proved, shall be produced by or on
 behalf of, the disciplinary authority.
 The witness shall be examined by or on
 behalf of the Presenting Officer and may
 be cross-examined by or on behalf of the
 Government servant. The Presenting
 Officer shall be entitled to re-examine,

the witnesses on any points on which they have been cross-examined, but not on any new material without the leave of the inquiring authority. The inquiry authority may also put such questions to the witnesses as it thinks fit."

. We have perused the enquiry report and we find that the enquiry was conducted in a strange manner. The provisions of Rule 16 were substantially departed from and the enquiry officer followed Rule 20, which is that the enquiry authority may after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. The enquiry officer for example, examined the panch witness by putting question to him on the recording of the panchanama, but appears not to have given an opportunity to the Petitioner to cross examine the witness, instead called on the Petitioner to explain the material as contained in the panchanama.

. None of the witnesses as set out in the list of witnesses were examined. Though Shri. S.N. Sawant had been called, we do not find that his statement was recorded. The record of the enquiry held would show that the enquiry started with the enquiry officer putting questions to the delinquent employee as to how he had given statement before the panchas. The delinquent employee's statement was recorded that he was manhandled and had made statement under pressure and had also so stated in his bail application before the Magistrate. The officer who had recorded statement was not examined. The only pancha Narvekar who was examined as noted earlier, questions were put to him by the Enquiry Officer and thereafter questions were put to the delinquent. In our opinion the Enquiry Officer did not follow the requirement of Rule 16 and on that count the findings at least to the extent of charge I must be set aside. It is not possible to accept the contention of the Respondent that no prejudice was occasioned. If the confessional statement recorded of the Petitioner had to be accepted, then considering the judgment of the Apex Court in the case of Kuldipsingh (supra) the enquiry officer really had to come to conclusion that the statement was voluntary. In the instant case, there was no such

material to hold that the confessional statement was voluntary nor has a specific finding being recorded to that effect by the Enquiry Officer. We have no doubt that in in so far as first charge is concerned, it really will not be possible for this court to support the findings of the Enquiry officer or for that matter the order of the tribunal. The findings of the disciplinary authority which are based on no evidence, are perverse. The findings on charge I are set aside.

7. We then come to the findings in so far as second charge is concerned. The Enquiry Officer questioned the petitioner on that account and this is how his statement has been recorded. It has nowhere being pointed out or contended that the statement was not recorded correctly. The portion of the statement reads as under :

"Shri. Patil was explained about the second charge about the amount of Rs.11,500/-, which he has received as given by him before the police. In the written statement he has also then stated that Rs.9,200/- were at his residence and he promised to bring them. Shri. Patil was questioned whether he handed over the

amount at his residence Shri. Patil thereafter stated that he was taken to his residence by the police, but he did not hand over the amount himself. He stated that he was brought back to the custody and later on police went to his residence and the amount of Rs.9,200/- was given by Mrs. Patil to the police. Shri. Patil sated that he is not aware why Mrs. Patil gave the money to Police because he did not said to Mrs. Patil to hand over the money. He further stated that Mrs. Patil must have been pressurised to part with the money which Shri. Patil stated that it belonged to his father. Enquiry Officer wanted to know from where the amount of Rs.9,200/- was produced, he has stated that his father is an agriculturist and for construction of house, this amount was brought by him and was kept with Mr. & Mrs. Patil for safe custody. On 19.1.77 Rs.2,300/- was stated to have been produced by Shri. Patil before the Police Authorities. Shri. Patil stated that he did not produced that amount, but was produced by his father. Shri. Patil

was questioned why the amount of Rs.11,500/- found in his possession should not be taken as unaccounted and unexplainable. Shri. Patil stated that it is the saving of his father over a period of time."

8. At this juncture, we may point out that earlier a learned Division Bench of this court had passed an order dated 13.12.2002 and had taken a view that there was no material against the petitioner and accordingly had set aside the order and directed to reinstate the petitioner in service with all consequential benefits. The State of Maharashtra preferred S.L.P. before the Apex Court. The Apex Court in C.A. No. 2493 of 2004 while granting leave, was pleased to set aside the order and remitted the matter back to this court for fresh consideration and disposal.

9. The question really is, whether it can be said based on the material available and the enquiry conducted, that on the statement made by the petitioner before Enquiry Officer, Charge No. 2 is proved. The Judgement in State Bank of Patiala is distinguishable, as in that case, copies of

statement of witnesses were not furnished. The delinquent employee was permitted to peruse and take inspection of the documents. In Kuldipsingh (supra) the Apex Court was pleased to hold that in the departmental enquiry, it was open to the enquiry officer to rely upon the voluntary statement made to the police as long as the enquiry officer has come to the conclusion that the statement was voluntary and true. In the instant case as noted earlier, such findings has not been specifically recorded. In K.L. Tripathi (supra), the issue was of compliance of principles of natural justice and fair play. In the instant case, there is a specific rule, that the enquiry must be conducted as far as possible in terms of Rule 8 and 16 of the rules. There has been no explanation as to why there has been departure on that count. Once a procedure was laid down,, the enquiry officer as far as possible was bound to follow the procedure. If he wanted to depart from procedure, reasons ought to have been recorded, as to why on the facts of the case, the procedure could not be followed. Coming to the facts of record, in so far as Charge I is concerned, the confessional statement and the pancha's evidence will have to be discarded.

. Having said so, the question is whether based on the statement recorded of the Petitioner and it has not been denied that the statement was not faithfully recorded by the Enquiry Officer, was there material to show that the Petitioner was in possession of Rs.11500/- which was unaccounted. We have referred earlier to the article of charge which was of being in possession of unaccounted cash as set out in annexure 1 to the memorandum. It was only in annexure II while referring to article II, reference was made that the said amount was part of the stolen amount referred to in Article I. The charge, however, as noted earlier was that Petitioner was in possession of the sum of Rs.11,500/- which was not accounted. A sum of Rs.9500/- was recovered from residence of the Petitioner and according to him was handed by the wife to the police. The Petitioner's own statement is that a further sum of Rs.2300/- was produced by his father. In other words, at least a sum of Rs.9200/- was recovered from the residence of the Petitioner. The case of the Petitioner was that money was his father's savings, which his father had given to him for the purpose of construction of his house. Once that be the case, if it is established that money had come from the premises which were in possession of the Petitioner as a

public servant, the onus shifted on the Petitioner to establish that the amount was in fact amount given to him by his father. It was not his case that it was his own savings. The father was not examined to discharge that burden. In other words, there was material before the enquiry officer to draw an inference which the Enquiry Officer has drawn. Can this court in the exercise of its extra ordinary jurisdiction interfere with that finding. For that purpose we may gainfully refer to observations of the Apex Court in Para 12 of B.C.

Chaturvedi (supra) which reads as under :

"Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with.

Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence is defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or findings reached by the disciplinary

authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

. In the instant case, therefore, on the very statement of the Petitioner, which statement the Enquiry Officer could treat as material, he could have come to the conclusion drawn by him, even if the other material which was relied upon however, has to be excluded.

. That being the case, we are clearly of the opinion that Charge 2 against the Petitioner had been proved. The Petitioner was a public servant. He was found in possession of money, which he could not explain. We must bear in mind also that all the three who were charged in the criminal case were convicted. The findings in the enquiry of the other delinquent resulted in his dismissal from service. Considering the gravity of the misconduct, the finding on Charge 2 itself was sufficient to impose punishment which has been

imposed on the petitioner. We have therefore, no reason to interfere with the punishment imposed by the Disciplinary Authority. Apart from that we also concur with the findings in so far as Charge 3 is concerned.

10. We may consider yet another objection raised on behalf of the Petitioners, that once the petitioner was discharged that will mean a clean acquittal and consequently he could not have been charged for the misconduct in respect of which criminal proceedings had been dropped. The argument no doubt is attractive. It will however, have to be considered on the touch stone of the law declared by the apex Court. The law so declared is that a court trained in law and after consideration of the evidence of the witnesses has come to the conclusion that the accused is not guilty, then ordinarily in respect of the same charges no chargesheet be issued. This however, is a case where benefit of doubt was given to the accused. In such cases it is always open to the disciplinary authority to initiate disciplinary proceedings. See State of Rajasthan Vs. B.K. Meena AIR 1997 S.C. 13. The Judgement in M. Paul Anthony Vs. Bharat Gold Mines Ltd. AIR 1999 SC 1416 has to be

restricted to the peculiar facts of that case. Reason being requirement of proof in the case of the departmental or domestic enquiry is different than in the case of criminal trial. In the instant case there has been no trial. In other words, there was no occasion for the criminal court to consider the evidence led before it. All that happened was that based on the chargesheet itself, the criminal court for whatever reasons, found that no charge can be framed against the petitioner. Possibly the criminal court was influenced by the fact that confessional statement by the petitioner cannot be used against him. It is not for us to go into that aspect of the matter. The fact however, remains that the petitioner was not acquitted because in the evidence led, he was found not guilty. The Petitioner was discharged because the court came to the conclusion that on the material placed before it, there was no case to frame charge. It therefore, cannot be said that discharge would amount to clean acquittal. On the contrary, it would still be open in the departmental proceedings, if new material become available, which was not before the criminal court to base its finding on such material. In the instant case, as noted by us in the earlier part of our judgement, the petitioner himself admitted to

recovery of sum of Rs.9200/- from his residence. He was unable to explain as to how he came in possession of that money. This therefore, was an admission in the departmental proceedings which could have been considered. In our opinion, therefore, discharge cannot be placed on the same footing as honourable acquittal. That contention must therefore, be rejected.

11. Before parting, we must express our anguish and surprise at the manner in which the Petitioner was discharged without framing charges, when in fact based on his confessional statement there was recovery of money. Whether ultimately that could have led to Petitioner's conviction is another matter. The Magistrate and A.P.P. seems to have been in a hurry to get the Petitioner discharged. The Enquiry Officer then in the departmental proceedings virtually by passed procedure, when there were rules in force which the enquiry officer was bound to follow. There is no reasonable explanation as to why the procedure was departed from.

12. Having said so, we find no merit in this petition and for the aforesaid reasons, rule discharged. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)